

EX PARTE OR LATE FILED

ATTACHED BY ORIGINAL

RECEIVED

MAY 10 1994

MILLER & HOLBROOKE

1225 NINETEENTH STREET, N. W.

WASHINGTON, D. C. 20036

MATTHEW C. AMES
TERESA D. BAER
FREDERICK E. ELLROD III
LISA S. GELB
LARRINE S. HOLBROOKE
TILLMAN L. LAY
NICHOLAS P. MILLER
JOSEPH VAN EATON

TELEPHONE (202) 785-0600
FACSIMILE (202) 785-1234

WILLIAM R. MALONE
OF COUNSEL

BETTY ANN KANE*
GOVERNMENT RELATIONS ADVISOR

*NOT ADMITTED TO THE BAR

May 10, 1994

VIA HAND DELIVERY

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in MM Docket 92-266

Dear Mr. Caton:

Pursuant to 47 C.F.R. § 1.1206, United Broadcasting Corporation ("UBC"), through undersigned counsel, submits this original and one copy of a letter disclosing a written and oral ex parte presentation in the above-captioned proceeding.

On May 10, 1994, the undersigned met on behalf of UBC with Lisa Smith of Commissioner Barrett's office at the FCC.

The meeting dealt with the maximum permissible rates for commercial leased access channels, including matters set forth in the informal comments filed by UBC in the above-captioned proceeding on April 8, 1994 (copy attached). I have also attached two additional copies of a written presentation that was given to Ms. Smith and filed with the Secretary on May 10.

Very truly yours,

MILLER & HOLBROOKE

By

Tillman L. Lay

Enclosures
cc: Lisa Smith, Esquire
0426\exparte4.not

No. of Copies rec'd
List ABCDE

042

MAY 10 1994

EX PARTE PRESENTATION OF UNITED BROADCASTING CORPORATION
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

On April 8, 1994, United Broadcasting Corporation, d/b/a TELEMAMI ("UBC") submitted informal comments in the Commission's rulemaking on leased access channels (the "April 8 Submission"). The following discussion is intended to provide information to Commission staff that was obtained after the filing of UBC's April 8 Submission.

I. Introduction

Under its current and prior management, the TELEMAMI channel has been providing Spanish-language cable programming in the Miami area since approximately 1984. UBC's programming is currently carried on four cable systems in Dade County. TELEMAMI offers 24-hour variety programming, approximately 90% of which is in Spanish, and the rest in Portuguese.¹

UBC pays \$3,500 per month to one system, and \$5,000 per month another. It pays nothing for channel access on the other two systems; those operators are instead compensated with the right to sell a percentage of the advertising time available on TELEMAMI.

TELEMAMI is completely advertiser-supported and receives no revenues from subscribers. Because TELEMAMI has been carried on the expanded basic tier, the operators currently earn revenue from subscribers for channels that include TELEMAMI.

¹Attached as Exhibit A are copies of three recent news articles about TELEMAMI and another Spanish-language programmer in the Miami area.

UBC was recently informed by one operator, TCI TKR of South Dade, Inc. ("TCI-South") that it had thirty days to enter into a new agreement under which UBC's channel lease payments would increase to \$26,341 per month, or \$316,092 per year. Another operator, Gold Coast Cablevision ("Gold Coast"), has offered a leased channel contract under which, beginning June 1, 1994, it will carry UBC at a rate of \$20,000 per month. Gold Coast claims that the Commission's new leased access rules actually justify a rate of \$26,140, even though UBC currently pays Gold Coast no monetary compensation for carriage. TCI-South also claims its proposed new \$26,341 per month rate is justified by the FCC's new leased access rules. TCI-South's proposed new rates reflect over a 750% increase from the \$3,500 per month UBC has been paying. Gold Coast's increase is proportionally even greater. Since UBC's total sales in 1993 amounted to only \$182,125 for the entire year, TCI-South's and Gold Coast's new proposed lease rates -- for carriage on just two of the four systems on which UBC is carried -- exceed UBC's entire annual revenue. As noted in UBC's April 8 Submission, these are astronomical increases that would force UBC out of business.

In the April 8 Submission, UBC proposed two alternatives for determining the maximum allowable leased access rate. First, the Commission should recognize that advertiser-supported leased access programmers like UBC that are carried on basic or expanded basic tiers are more akin to traditional cable programming networks, and the FCC's implicit fee formula overlooks the fact

that operators already recover revenue from subscribers (through expanded basic service rates) for carrying UBC programming. The operators' interpretation of the Commission's implicit fee formula would permit operators to double recover subscriber revenues from the channel: first from subscribers, and then again from the programmer. To avoid this windfall to operators, and to promote competition, the maximum permitted leased access rate should be equal to the compensation arrangement offered by the cable operator to its leased favored non-affiliated programmer on the same tier.

Second, UBC's experience proves that at least in the Dade County area, it is possible to establish a market rate for leased access channel space. As noted above, that rate ranges from non-monetary advertising compensation arrangements to \$5,000 per month. The Commission should bar operators from charging leased access rates in excess of the prevailing market rate in areas such as Dade County where there is evidence of a prevailing market rate.

UBC here argues that, based on new information from Gold Coast, it appears that operators are improperly taking advantage of an apparent ambiguity in the text accompanying the Commission's rules at Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, Docket 92-266, 8 FCC Rcd. 5631 (1993) ("Report and Order"), to calculate their new rates. Furthermore, when

interpreted correctly, UBC believes that the results vindicate the alternatives proposed in UBC's April 8 Submission.

II. Factual Background

TELEMIAMI is currently the only locally-based, full-time Spanish language variety cable programmer in the Miami area, and has offered such programming for approximately ten years. At one time or another, UBC has entered into channel lease agreements with operators for access to each of four systems in the Miami area: Gold Coast; TCI-South; Miami Tele-Communications Inc. ("Miami-TCI"); and South Dade Cablevision ("Adelphia").

TELEMIAMI does not charge subscribers to receive its programming but instead derives revenue from advertising spots carried in its programming. TELEMIAMI does not carry home shopping, infomercials or pay-per-view programming.

In April 1986, UBC's predecessor entered into a five-year channel lease agreement with Miami Cablevision, the predecessor of Miami-TCI (the "Miami-TCI Lease"). This agreement provided for two successive five-year renewal options. Effective November 1991, UBC and TCI amended the agreement to provide, among other things, that beginning November 1, 1993, UBC would pay TCI a monthly channel lease fee of the greater of \$5,000, or 15% of UBC's billings. The percentage provision in the agreement has never been activated because the flat fee of \$5,000 has always been greater than 15% of UBC's billings.

On March 25, 1988, UBC entered into a five-year channel lease agreement with Dade Cable Television, Inc., under which UBC

gained access to what is now the TCI-South system (the "TCI-South Lease"). This contract contained no renewal provision.

Effective November 1991, the agreement was amended so that UBC was obligated to pay the greater of \$3,500 per month, or 15% of billings, from November 1, 1992 through March 24, 1993, when the contract expired. As with the Miami-TCI agreement, the flat fee has always exceeded 15% of UBC's billings.

After the TCI-South Lease expired in 1993, UBC attempted to negotiate a new lease, but TCI-South refused, saying that it was waiting until the Commission's new rate regulations had been issued. UBC has continued to pay \$3,500 per month on a month-to-month basis, and TCI-South has accepted UBC's payments, pursuant to a letter extending the lease on that basis.

As described in detail in the April 8 Submission, Ms. Maria Silveira, TELEMIAAMI's General Manager, attended a meeting in February 1994 for companies who either have or desire commercial leased access agreements with affiliates of Tele-Communications, Inc. ("TCI"). Under new rate schedules distributed at the meeting, UBC's monthly lease payments for access to both the Miami-TCI and TCI-South systems would total \$47,758, an increase of 562% over its current combined payments of \$8,500. For the TCI-South system alone, the new rate is \$26,341 per month, an astounding increase of 753% over the current monthly rate of \$3,500.

On November 11, 1988, UBC entered into a channel lease agreement with Adelphia (the "Adelphia Lease"). Adelphia agreed

to carry TELEMiami for a five-year term with two five-year renewal options; renewals are effective upon notice by UBC, provided it is not in default and has performed to the satisfaction of Adelphia and Adelphia's franchising authority. UBC does not pay a fee for channel access on Adelphia's system. Instead, Adelphia has the right to sell up to 2% of available advertising time on UBC's channel, increasing to 3% during the renewal terms. Adelphia has never actually sold any such time. UBC has exercised its renewal right, but Adelphia has only stated that it is being "reviewed." Consequently, UBC anticipates that Adelphia may assert that UBC is in default or not performing satisfactorily, in an effort to renegotiate the lease terms.

On September 1, 1990, UBC entered into a three-year channel access lease with Gold Coast, with compensation provided in the form of advertising time, as under the Adelphia Lease (the "Gold Coast Lease"). The Gold Coast Lease contains no renewal option and has expired. Gold Coast has never availed itself of its right to sell time on TELEMiami. UBC attempted to negotiate a new agreement but was told that Gold Coast was waiting to see the Commission's new rules. Nevertheless, Gold Coast continued to carry TELEMiami, until March 25, 1994, when Gold Coast informed UBC by letter that Gold Coast planned to discontinue carriage of TELEMiami effective April 1, 1994. Gold Coast has since agreed to continue to carry TELEMiami through May 31, 1994, and has presented UBC with a proposal for leased access after June 1 under which TELEMiami would have to pay a rate of \$20,000 per

month. Gold Coast claims that the FCC's formula actually justifies a higher monthly lease payment -- remarkably similar to TCI-South's proposed new rate -- of approximately \$26,000 per month. UBC cannot continue to make the new lease payments demanded by operators in excess of \$20,000 per month and stay in business. Indeed, UBC's monthly payments to Gold Coast alone under its proposed new lease would be 33% higher than UBC's entire monthly revenues.

III. Discussion

The 1992 Cable Act substantially amended the commercial leased access provision of the Cable Communications Policy Act of 1984, 47 U.S.C. § 532. In enacting the 1992 Cable Act, Congress made clear its goal of promoting the competition provided by diverse commercial leased access programmers such as UBC. It amended 47 U.S.C. § 532(a) to state explicitly that "[t]he purpose of this section is to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems" (emphasis added).

Congress was also concerned that operators might have incentives to establish unreasonable terms or refuse to lease channel capacity. Specifically, the legislative history makes clear that the amendments to Section 612 were designed to "act as a safety valve for programmers who may be subject to a cable operator's market power and who may be denied access [or] given

access on unfavorable terms." S. Rep. No. 102-92, 102d Cong., 2d Sess. at 30, reprinted in 1992 U.S.S.C.A.N. 1133, 1163. Consequently, the 1992 Act directed the FCC to determine the "maximum reasonable rates" that an operator could establish, and to establish reasonable terms and conditions for such use. 47 U.S.C. § 532(c)(4).

In adopting the required regulations, the FCC noted its view that commercial leasing "could serve important diversity and competition objectives" Report and Order at ¶ 515. The Commission also received comments to the effect that excessive rates were a significant reason for the lack of development of commercial leased access programming. Report and Order at ¶ 510. Finally, the Commission expressed its expectation that its rate formula would lead to lower rates:

We expect that setting maximum rates on this basis will eliminate uncertainty in negotiations for leased commercial access. It will also automatically lower the starting point for negotiations for a substantial number of potential programmers who are not in the same programming classification as those paying the highest implicit fee, and, in some cases the maximum rate per subscriber will be no more than a small portion of the basic service tier fee. Thus, we are making our decision in this matter based on an expectation that, under these conditions, interest in the use of the leased access market will rise because rates will be low enough to entice programmers, particularly in the programming classifications with the lower implicit fees, to use leased commercial access.

Id. at ¶ 521 (emphasis added).

With that background, it is simply inconceivable that the Commission intended for its rules to sanction the skyrocketing of leased access rates that operators have demanded, or that the Commission ever anticipated that its new rules would force a

previously viable leased access programmer like UBC out of business.

In the April 8 Submission, UBC suggested that the Commission's rules are not comprehensive enough, and do not contemplate situations in which leased access providers do not receive payment directly from subscribers. Because the operations of leased access programmers such as UBC are not substantially different from those of a traditional cable programming network, UBC suggested that operators should actually pay leased access programmers for the right to carry their programming.

The April 8 Submission supports this proposition by showing that the Commission's implicit fee formula overlooks the fact that operators already earn subscriber revenue from the channels UBC leases. Because UBC is typically carried on an operator's expanded basic tier, operators do not forego any subscriber revenue at all by carrying UBC.

Using new information obtained from Gold Coast, UBC now wishes to support this conclusion with an additional argument based on an interpretation of the Commission's existing rules. UBC also wishes to advise the Commission that operators appear to be using an ambiguity in the Report and Order to justify their dramatic rate increases.

Gold Coast submitted the following calculation to justify its figure of \$26,140 per month, citing ¶¶ 517-519 and footnote 1312 of the Report and Order:

Maximum Monthly Per Channel Revenue -	Monthly Cost of Programming	x	Service Level Penetration	=	Leased Access Rate per Subscriber
--	--------------------------------	---	------------------------------	---	--------------------------------------

Where:

Maximum Monthly per Channel Revenue = \$0.421 (Form 393 per channel rate)
+ \$0.583 (maximum per channel advertising revenue) = \$1.004.

Monthly Cost of Programming = \$0.2722 for the specific channel to which the foregoing
advertising revenue applies.

Service Level Penetration = .928 for the channel available for leased access.

Number of Basic Subscribers = 38,493.

The above formula and data yield the following calculation:

$(\$1.004 - \$0.2722) \times .928 = .6791 \times 38,493 = \$26,140$

But section 76.970 provides that the implicit fee "is calculated by determining the monthly price per subscriber that the operator pays to carry the programming of non-affiliated providers and deducting the monthly price subscribers pay to view the programming of the non-affiliated provider." This means, using Gold Coast's figures, that the 42.1 cents per month revenue figure should be deducted from the 27.22 cents per month programming cost figure, not the other way around. It appears that the first example in footnote 1312 of the Report and Order, in which the programming cost figure and the monthly subscriber rate were reversed, in contradiction of the text of the rule, has led operators to believe they may compute rates in this manner. As discussed below, the attempt to include per-subscriber advertising revenues is also unsupported and contrary to the FCC rules. Thus, under Section 76.970(c), the implicit fee should be a minus \$5,315 per month, or a payment by Gold Coast to TELEMAMI of \$5,315 per month:

<u>Monthly Cost of Programming</u>		<u>Monthly Price Paid by Subscriber</u>		<u>Penetration Level</u>		<u>Number of Subscribers</u>	<u>Leased Access Rate</u>
0.2722	-	0.421	x	.928	x	38,493	(\$5,315)

This calculation reaches essentially the same result as the argument made in UBC's April 8 Submission.

As noted above, Gold Coast's calculation is not consistent with the formula for an additional reason. The FCC's rules do not allow Gold Coast to add in "maximum per channel advertising revenue" on top of the monthly pro rata subscriber revenue that Gold Coast receives from the channel. The FCC's Report and Order refers several times to using "the rate per month that a subscriber pays to receive the programming" in calculating the implicit fee See paragraph 518; see also paragraph 517 and note 1312 (referring to "subscriber fee to view [the] channel"). Section 76.970(c) of the FCC's rules also explicitly requires operators to use "the monthly price subscribers pay to view the programming of the non-affiliated provider." Nowhere do the Report and Order or the rules permit an operator to add advertising revenue on top of this figure.

If advertising revenue per subscriber is removed from Gold Coast's calculation (as the rules require), then Gold Coast's formula, ignoring the literal text of the rule and adopting Gold Coast's erroneous interpretation based on footnote 1312, yields a monthly leased access rate of \$5,315:

<u>Monthly Revenue Per Subscriber</u>	<u>Monthly Cost of Programming</u>	<u>Penetration Level</u>	<u>Number of Subscribers</u>	<u>Leased Access Rate</u>
---	--	------------------------------	----------------------------------	-----------------------------------

$$0.421 \quad - \quad 0.2722 \quad \times \quad .928 \quad \times \quad 38,493 = \$5,315$$

This result is approximately the same as the market-based rate argued for as an alternative in UBC's April 8 Submission.

IV. Conclusion

The Commission should address the above points to clarify exactly how operators are to calculate leased access rates. In any event, it is certain that, as it is now being interpreted by operators, the FCC's implicit fee formula is defeating the intent of Congress and the Commission. The Commission must act immediately and reexamine its current rules if leased access programmers are to survive.

0426\exparte2.sub

EXHIBIT A

LEASED ACCESS RATES PER SUBSCRIBER
DEMANDED BY OPERATORS

	<u>Basic Tier</u>	<u>Expanded Basic</u>
TCI-South	\$0.71	\$0.66
Miami-TCI	\$0.55	\$0.57
Gold Coast	\$0.68	N/A

SUGGESTED LEASED ACCESS RATES PER SUBSCRIBER¹

	<u>Current (market rate)</u>	<u>Proposal A²</u>	<u>Proposal B³</u>
TCI-South	\$0.09	(\$0.14)	\$0.14
Miami-TCI	\$0.12	(\$0.14)	\$0.14
Gold Coast	\$0.00	(\$0.14)	\$0.14

¹Based on number of Basic subscribers.

²Proposal A is outlined at pp. 10-11 of the ex parte presentation. Under this proposal, operators would pay leased access programmers for their programming, as is the norm with non-leased access programmers. The calculations are based on the number of subscribers in each system, but revenue, cost and penetration figures are those obtained from Gold Coast. Comparable information for the TCI systems was unavailable, but are presumably similar since the figures proposed by the operators are similar.

³Proposal B is the proposal outlined on pp. 11-12 of the ex parte presentation. It relies on the same assumptions as Proposal A for the TCI systems.



ANCHORS: Patricia Janiot and Jorge Gestoso broadcast the news on *CNN Internacional*.

Two channels to carry CNN's Spanish news

By BEATRIZ PARGA
Herald Staff Writer

Cable News Network's Spanish-language TV news — *CNN Internacional* — is making a double-barreled return to Miami: Today, on the Telemiami cable channel and June 1, when Spanish-language WJAN-Channel 41 goes on the air.

CNN and WJAN signed a contract March 16 permitting the Miami station to broadcast the newscasts, which CNN produces in Atlanta. Viewers can tune to WJAN using a standard UHF TV antenna.

María Silveira, general manager of Telemiami, said she wasn't surprised by the announcements of the CNN-WJAN link.

"We were informed a couple of weeks earlier about [the negotiations]," she said. "We knew we did not have exclusive rights. Besides, we're a cable channel, which is different from the method of transmission used by Channel 41."

Until June 1993, CNN's Spanish-language newscast aired nationally on the Telemundo network. Telemundo allowed its contract to expire and is planning

to launch its own Spanish-language 24-hour news station in collaboration with Reuters Television.

CNN then sold the service to Univision, which has the right to use CNN news-video footage. Channel 41 and Telemiami will air the full Spanish-language telecast produced in Atlanta by CNN. Half-hour newscasts air daily at 4:30, 6:30, 8:30 and 10:30 p.m. to Latin America.

"We have a great international newscast. All we need now is to form a Miami team to cover local news," said Sherwin Grossman, WJAN's owner. "I can't tell you much more, because we're just taking the first steps."

Co-anchored by Uruguayan Jorge Gestoso, 43, and Colombian Patricia Janiot, 30, *CNN Internacional* is transmitted to 19 Latin American countries, reaching about 1.5 million listeners via 200 stations.

The focus of the newscasts has changed, Gestoso said. During the Telemundo association, "coverage of Latin America came second to news about Hispanics in the United States. Now Latin America gets the lion's share of our coverage."

GALERIA

CANDELERO PARGA



Juez agualle las

Dicen que desde la muerte de Pablo Escobar no había en Colombia tanto alboroto. El viernes pasado en Bogotá, 45,000 personas que se disponían a escuchar al cantante Erasmo Ramazzotti, hicieron sentir su descontento cuando por orden de un juez el ídolo italiano no pudo cantar.

La actuación de Ramazzotti, que viene a cantar en Miami el 9 de mayo, estaba por empezar en el estadio El Campín. Su presentación fue impedida por una viciosa del centro deportivo que no simpatiza con los conciertos. Y tiene motivos. Porque en una actuación de Guns N' Roses en ese estadio, los vidrios de su casa fueron rotos por varios fanáticos que no pudieron entrar al concierto. Temerosa de que con Ramazzotti se repitiera el incidente, la señora se amparó en una ley que dice que los estadios son sólo para el deporte. Y un juez bogotano le dio la razón.

Como consecuencia, los fanáticos se quedaron con los malos hechos, los organizadores del concierto perdieron montañas de dinero y la alcaldía de Bogotá tendrá que responder a una demanda judicial (a fin de cuentas, era la alcaldía la que había aprobado el concierto). Pero los promotores colombianos, John Jairo Sepúlveda y Felipe Santos, no se han dado por vencidos. Contra viento y marea piensan presentar el espectáculo, y dicen que Miami les da la fecha de su

concierto.

Nananina, respondió en esta ciudad el promotor artístico Masolo Olalquiaga. Y afirma que "lleva o trae". Ramazzotti estará en Miami el 9 de mayo en el James L. Knight Center. "La boletería se está vendiendo de una manera impresionante y como el espectáculo es tan costoso, no voy a dar ni un solo boleto de cortesía", dice. Lo cierto es que hasta Carlos Iglesias, hermano de Julio, y José Luis Rodríguez "El Puma" han llamado a hacer reservaciones.

Mientras tanto, en Colombia siguen buscando otra fecha para el concierto.

We Will Rebuild

Sheila Hall, directora de mercadeo de Coral Pictures y ex relacionista pública de Univisión celebra algo nuevo en su vida: tiene casa. La noticia sería curiosa si no fuera porque Hall se quedó homeless por culpa de Andrew. Y aún tiene pesadillas cuando recuerda cómo su casa se iba cayendo, mientras que con su esposo, Alfredo Aguirre, iban cambiando de refugio.

"Terminamos al lado de la lavadora", dice. Cuando regresó la calma, la casa estaba destruida. Se mudaron temporalmente a un apartamento en Fontainebleau Park. "La casa quedó inservible, tuvieron que pasarle un bulldozer por encima", explica. Pero sobre la base, volvieron a levantar las paredes. La casa ya tiene techo, alfombras y baldosines. "Fuimos fieles a la

campaña We Will Rebuild", dice. "Es la misma casa, pero con diferentes muebles". El vecindario está ya casi todo levantado. Pero no tienen jardín, y pasarán años antes de que los árboles vuelvan a dar sombra.

Menuda sorpresa

Betty Pino estará ausente de Radio Ritmo durante dos semanas. La locutora ecuatoriana se marchó el martes de vacaciones, pero no viajó sola. La acompañó un grupo de 50 radioyentes de la estación que decidieron acompañarla en un viaje por España, Francia, Alemania e Italia. Y no eran ganadores de un concurso. Cada uno de los viajeros pagó \$2,995 por el tour.

Por cierto que el jueves la locutora celebrará su cumpleaños en el hotel Miguel Ángel de Madrid. Entre los asistentes estarán Rocío Jurado, Lola Flores, y sus hijas Lolita y Rosalía, el compositor Manuel Alejandro, Miguel Gallardo e Isabel Pantoja, entre otros.

Pino no sabe si el cantante Dyango, su ex amor por más de un lustro, está invitado a la fiesta, pero Jorge Montilla, su organizador, asegura que Dyango ha confirmado su asistencia. "No se lo hemos dicho a Betty para sorprenderla", dice.

Mientras Pino descansa, la reemplazará en el bloque de 10 a.m. a 3 p.m. el locutor Enriquillo de la Maza.

Maxi-Braves

El deporte le hizo ganar muchos fanáticos. Pero fue su espontánea alegría la que le atrajo miles de amigos. Unos y otros se unieron al locutor colombiano Freddy Elorza, alentándolo a luchar contra la leucemia. Pero el sábado Elorza, director de deportes de Radio Caracol Miami, perdió la batalla por la vida. Murió en el hospital neoyorquino donde había recibido el trasplante de médula. Ha dejado una esposa joven y tres pequeños hijos.

El periodista cubano José Díaz-Balart será el presentador principal de un nuevo noticiero que lanzará el Canal 4 el próximo lunes, a las 4:30 p.m. Lo acompañará la locutora de noticias Jennifer Valoppi.

Las novelas brasileñas pasarán pronto a ser uno de los platos fuertes de la nueva programación del canal por cable Telemiami, junto con el noticiero CNN Internacional que debutó el lunes. Pero además, se propone atraer audiencia juvenil. El gancho principal es el programa musical CD USA, que antes se transmitía los sábados y ahora se ve de lunes a jueves a las 7 p.m. Incluye videos musicales y entrevistas artísticas conducidas por Mónica Segura, una joven colombiana de 20 años.

Se rumora que Univisión está en proceso de comprar dos estaciones de televisión en Chicago y Houston. No se ha podido confirmar el rumor. Manténganse en sintonía.

Alejandra se ha convertido en la telenovela número uno de España. Si alguien va a Madrid descubrirá que en cada esquina está María Conchita Alonso, con su foto sexy, a caballo sobre un árbol. La telenovela, que se transmite por Telemundo, se ha vendido a 45 países y el próximo debut es en Indonesia.

Dos mujeres y un bebé en camino... Así se debería llamar la novela ahora que la curvilínea



José Ignacio Cabrujas (izq.) y Anthony Quinn.

Momento de gloria en la pantalla

Le llegó su momento de gloria al escritor venezolano José Ignacio Cabrujas: una novela con Anthony Quinn. Le tocó hacer el guión de la telenovela Rubirosa.

Cabrujas es autor de los guiones de las novelas La dama de rosa, Señora y Las dos Dianas, también ha adaptado para la televisión obras del escritor venezolano Rómulo Gallegos y del dramaturgo francés Alejandro Dumas. "Es el García Márquez de las telenovelas", afirmó el productor Jorge Hané, el responsable de que Cabrujas ahora esté escurbiendo en la vida de los principales personajes de la telenovela Rubirosa, sus cinco esposas y el dictador Rafael Leonidas Trujillo, amigo y yerno de Rubirosa, que será interpretado por Quinn.

"Esta telenovela será una revolución en el mercado hispano", dijo Quinn en una entrevista grabada. "Siempre he pensado que las telenovelas, si son bien hechas, con inteligencia y autenticidad, constituyen un medio inmejorable para representar la vida de cualquier personaje de trascendencia histórica".

Bibi Gaytán está esperando la llegada de la cigüeña, según confirmó una fuente allegada a la cadena Televisa. La actriz mexicana, que hace tres meses se casó en secreto con el actor Eduardo Capetillo, ya revela la futura maternidad en su figura. Lo que no se sabe es qué piruetas le darán al libreto de la novela Dos mujeres, un camino, con Gaytán, Erik Estrada y Laura León. Y es que según Radio Bamba de Chapultepec, el guión no incluya un embarazo en las grabaciones de la serie, que estaban programadas hasta agosto.

Nunca pensó el periodista nicaragüense Salvador Morales que algún día llegaría a convertirse en un crítico de cine. Pero desde que se fue a Carolina del Norte para trabajar con el Canal de Noticias NBC, se le han abierto nuevos horizontes en su carrera. Ahora, con entrenada voz de locutor, Morales no solamente hace los pronósticos del tiempo sino que también presenta los últimos estrenos del mundo del cine para la audiencia latinoamericana del canal en español de NBC.

"¿Quién es ese chico tan guapo que canta tan bien... Luis Miguel?" Así, con nombre y apellido, fue la pregunta de Liza Minnelli a Mauricio Zellú. Se escuchó en la entrevista que el periodista de farándula le hizo a la Minnelli para Primer Impacto de Univisión.

ESPECIAL

Especial: Programa con gran variedad de segmentos entre los que se encuentran *Círculo de misterios*, *Los fugitivos*, *En confianza*, con Mercedes Soler, *Matrimonio Zúñiga* con el *Retrato de la semana*, continúan los segmentos de *Niños perdidos* y *A su salud*, y un segmento diario con el astrólogo *Walter Mercado*.

En la radio

2 p.m.
WQBA-FM (107.5) La Exótica. Gino Latino Express. Represe a su casa sin estrés en compañía de Gino Latino y su programa lleno de música, noticias y comentarios sobre el tránsito.
5 p.m.
WOCN-AM (1450) Unión Radio. Informativo dominicano. Arturo López y José Francisco Nuñez con información desde República Dominicana y Latinoamérica en general.

Mi secretaria Repetición.
Limpia

3:30 p.m.

Cenizas y diamantes

Cosas de casados Repetición.

Tremenda corte

4:00 p.m.

Cristina Alto a agresión sexual.

1 hr.

Villa Alegre

Maria Laria

Casa de huéspedes Repetición.

Callito Ramírez

8:00 p.m.

Ocurrió así Enrique Gratas 1 hr.

Solteras del dos

Tiempo de renacer

5:30 p.m.

Más aprisa con la risa

NOCHE

6:00 p.m.

Noticias

Que pasa, USA?

Noticiero

Qué chicas Repetición.

Video fiesta

6:30 p.m.

Noticiero Univisión

Noticiero Telemundo Raúl Peimbert

Que llo con este trío Repetición.

7:00 p.m.

Dos mujeres, un camino

C.D. USA

Alejandra

Anabel Repetición.

Pedrin de Miami

7:30 p.m.

Magazine

8:00 p.m.

Más allá del puente

Película *Beamos sus*

mona. Drama 2 hrs.

Tres destinos

Dos mujeres en mi casa

Esta semana

8:30 p.m.

Hogar, dulce hogar

9:00 p.m.

Clarina

Cine de Telemundo

Mi secretaria

Limpia

9:30 p.m.

Cosas de casados

Tremenda corte

10:00 p.m.

Sensacionalismo Los Fugitivos.

La Coco Band, Paulina Rubio, los luchadores de sumo, acrobacias

chinos 1 hr.

¿CUAL SERA EL DESTINO DE

SECTION

FRIDAY

APRIL 22, 1994



Spanish-language station off the air

HIT TV, the 10-year-old, Spanish-language cable station based in Miami Springs, has gone off the air.

The station, shown only in Dade County, was dropped by Dynamic Cablevision and expected to be dropped by the other cable systems that carried it. They were Gold Coast Cable and TCI, which ran HIT in the south and downtown areas.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

APR 28 1994

OFFICE OF SECRETARY

In the Matter of)

Implementation of Sections of the)
Cable Television Consumer Protection)
and Competition Act of 1992)

Commercial Leased Access)

MM Docket No. 92-266

INFORMAL COMMENTS
OF UNITED BROADCASTING CORPORATION,
d/b/a TELEMIA MIAMI

Tillman L. Lay
Matthew C. Ames
MILLER & HOLBROOKE
1225 19th Street, NW
Washington, D.C. 20036
(202) 785-0600

Counsel for United
Broadcasting Corporation

Date: April 8, 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of Sections of the
Cable Television Consumer Protection
and Competition Act of 1992

Commercial Leased Access

MM Docket No. 92-266

INFORMAL COMMENTS
OF UNITED BROADCASTING CORPORATION,
d/b/a TELEMAMI

United Broadcasting Corporation, d/b/a TELEMAMI ("UBC") hereby submits these informal comments regarding regulation of leased access channels, pursuant to Section 612 of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), codified at scattered sections of Title 47 of the United States Code. UBC believes that the interests of commercial leased access programmers have not been adequately addressed, primarily because of the way the Commission's new rules are being applied by cable operators such as TCI TKR of South Dade, Inc. ("TCI-South").

I. Introduction

Under its current and prior management, the TELEMAMI channel has been providing Spanish-language cable programming in the Miami area since approximately 1984. UBC's programming is currently carried on four cable systems in Dade County.

TELEMIAMI offers 24-hour variety programming, approximately 90% of which is in Spanish, and the rest in Portuguese.

UBC pays \$3,500 per month to TCI-South, and \$5,000 per month to the neighboring "Miami-TCI" system. It pays nothing for channel access on the other two systems; those operators are instead compensated with the right to sell a percentage of the advertising time available on TELEMIAMI.

TELEMIAMI is completely advertiser-supported and receives no revenues from subscribers. TELEMIAMI is currently carried on the expanded basic tier of both the TCI-South and Miami-TCI systems, so Tele-Communications, Inc. ("TCI"), not TELEMIAMI, is currently earning revenue from carriage of TELEMIAMI on its systems.

UBC was recently informed by TCI-South that it had thirty days to enter into a new agreement under which UBC's channel lease payments would increase to \$26,341 per month, or \$316,092 per year. This reflects over a 750% increase from the \$3,500 per month UBC has been paying. Since UBC's total sales in 1993 amounted to only \$182,125 for the entire year, TCI-South's new proposed lease rate exceeds UBC's entire annual income. If UBC were required to pay rates comparable to TCI-South's proposed new rates on all four systems -- a distinct possibility at this point according to statements by the other operators that carry its channel -- UBC would be out of business in a matter of weeks. Even if the other operators do not raise their rates, UBC would be forced to cease operations within a few months because of TCI-South's rate increase alone.

Congress and the FCC cannot have intended such results. The 1992 Cable Act was supposed to improve conditions for commercial leased access programmers, not drive them out of business. Consequently, UBC believes that the Commission must reconsider the effects of its rules and act swiftly to remedy the situation.

UBC proposes two alternatives for determining the maximum allowable leased access rate. First, the Commission should recognize that its current rules do not contemplate leased access programmers such as UBC, which earns all of its revenue from selling advertising time and earns no revenue from subscribers. Leased access programmers such as UBC are more akin to traditional cable programming networks, and requiring them to pay operators allows the operator double recovery: first from subscribers, and second from the programmer. Consequently, instead of programmers paying operators, operators should pay programmers.

Second, UBC's experience proves that at least in some franchise areas it is possible to establish a market rate for channel space. And the historical market rate in the Miami area is far below the new rates TCI and other operators are proposing to charge, ostensibly based on the Commission's new implicit fee formula. Accordingly, the Commission should bar operators from charging leased access rates in excess of the prevailing market rate in such areas.

II. Factual Background

In one of the most heavily Hispanic areas of the United States -- the population of the TCI-South franchise area is 72.4% Hispanic -- TELEMAMI is currently one of only three full-time Spanish language variety cable programmers. Moreover, the other two are the national Spanish-language cable networks, Univision and Telemundo. Thus, TELEMAMI is currently the only locally-based, full-time Spanish language variety cable programmer in the Miami area.

TELEMAMI does not charge subscribers to receive its programming but instead derives revenue from advertising spots carried in its programming. TELEMAMI does not carry home shopping, infomercials or pay-per-view programming.

At one time or another, UBC has entered into channel lease agreements with operators for access to each of four systems in the Miami area: TCI-South; Miami Tele-Communications Inc. ("Miami-TCI"); South Dade Cablevision ("Adelphia"); and Gold Coast Cablevision ("Gold Coast").

In April 1986, UBC's predecessor entered into a five-year channel lease agreement with Miami Cablevision, the predecessor of Miami-TCI (the "Miami-TCI Lease"). This agreement provided for two successive five-year renewal options. Effective November 1991, UBC and TCI amended the agreement to provide, among other things, that beginning November 1, 1993, UBC would pay TCI a monthly channel lease fee of the greater of \$5,000, or 15% of UBC's billings. The percentage provision in the agreement has

never been activated because the flat fee of \$5,000 has always been greater than 15% of UBC's billings. In fact, UBC's billings in 1993 amounted to only \$182,125 for the entire year, so its average monthly billings were only about \$15,000.

On November 11, 1988, UBC entered into a channel lease agreement with Adelphia (the "Adelphia Lease"). Adelphia agreed to carry TELEMiami for a five-year term with two five-year renewal options; renewals are effective upon notice by UBC, provided it is not in default and has performed to the satisfaction of Adelphia and Adelphia's franchising authority. UBC does not pay a fee for channel access on Adelphia's system. Instead, Adelphia has the right to sell up to 2% of available advertising time on UBC's channel, increasing to 3% during the renewal terms. Adelphia has never actually sold any such time. UBC has exercised its renewal right, but Adelphia has only stated that it is being "reviewed." Consequently, UBC anticipates that Adelphia may assert that UBC is in default or not performing satisfactorily, in an effort to renegotiate the lease terms.

On September 1, 1990, UBC entered into a three-year channel access lease with Gold Coast, with compensation provided in the form of advertising time, as under the Adelphia Lease (the "Gold Coast Lease"). The Gold Coast Lease contains no renewal option and has expired. Gold Coast has never availed itself of its right to sell time on TELEMiami. UBC attempted to negotiate a new agreement but was told that Gold Coast was waiting to see the Commission's new rules. Nevertheless, Gold Coast continued to

carry TELEMiami, until March 25, 1994, when Gold Coast informed UBC by letter that Gold Coast planned to discontinue carriage of TELEMiami effective April 1, 1994. Gold Coast also since agreed to continue to carry TELEMiami thorough April 30, 1994, and has presented UBC with a proposal for leased access. Gold Coast is demanding a monthly lease payment remarkably similar to TCI-South's proposed new rate -- approximately \$20,000 per month -- ostensibly based on the Commission's new rules.

B. TCI-South's Rate Increase.

On March 25, 1988, UBC entered into a five-year channel lease agreement with Dade Cable Television, Inc., under which UBC gained access to what is now the TCI-South system (the "TCI-South Lease"). This contract contained no renewal provision. Effective November 1991, the agreement was amended so that UBC was obligated to pay the greater of \$3,500 per month, or 15% of billings, from November 1, 1992 through March 24, 1993, when the contract expired. As with the Miami-TCI agreement, the flat fee has always exceeded 15% of UBC's billings.

After the TCI-South Lease expired in 1993, UBC attempted to negotiate a new lease, but TCI-South refused, saying that it was waiting until the Commission's new rate regulations had been issued. UBC has continued to pay \$3,500 per month on a month-to-month basis, and TCI-South has accepted UBC's payments, pursuant to a letter extending the lease on that basis.

TELEMiami is currently carried as part of TCI-South's expanded basic tier, at channel 51. The TCI-South system has a